IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2286 OF 2005

MES Employees' Union & anr. — Petitioners
vs.
Union of India-through
Secretary, Ministry of Defence
& others. — Respondents

Mr.S.P.Saxena with Mr.S.G.Pillai for the petitioners.

Mr.Ravi Shetty with Mrs.N.V.Masurkar for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 6th October, 2006

P.C.

The petitioners have challenged the order dated 6.12.2002 in O.A.No.597/2002 and the order dated 25.2.2003 in Review Petition No.9/2003 passed by the Central Administrative Tribunal (CAT), Mumbai Bench, Mumbai whereby the respondents have been directed to fix the pay scale of Lift Operators in the scale of Rs.260-400 and related backwages as per the recommendation of the 4th and 5th Pay Commission as notified by the Government of India by restricting the same limited to one year before filing of the provisional application within three months from the date of the receipt of the copy of the order. The review against the same was also rejected and also

rejected their request to refer the matter to the Full Bench. Therefore, the present petition.

2. The present petition has been filed in the representative capacity on behalf of the 65 Lift Operators who are the members of the petitioners-MES Employees' Union, Mumbai. Based on the 4th Central Pay Commission prescribing two pay scales for the Lift Operators of CPWD were implemented by the Government with effect from 1.1.1996, the Lift Operators therefore preferred a writ petition before the Hon'ble Supreme Court and challenged the discriminatory pay scales between those operating light speed lifts and high speed lifts. The Apex Court, after considering the submissions by its judgment and order dated 23.11.1987 passed the following order:

> "We have considered the claim of the petitioners in the light of the submissions made by counsel for both sides. There is no justification in the distinction between those operating High Speed Lifts and Light Speed Lifts. Taking note of the facts that, the lifts have to be mechanically operated and involve the same skill, whether it be High Speed or Light Speed Lift, and keeping the technical (sic) background in relation to this service in view, we direct the lift operators serving under the Central Public Works Department to be given the same pay scale as admissible to Lift operators operating high speed lifts. This direction shall be effective from December 1, 1987. Writ Petition is disposed of without any order for cost."

3. The respondents also accepted and implemented equity and equality of the lift operators in CPWD and all other Ministries and Departments with effect from 1.12.1987. The Government of India by its order dated 20.12.1993 upgraded the pay scale of lift operators of CPWD for the period covered by the 3rd Pay Commission from Rs.210-290 to Rs.260-400 with effect from 1.1.1973. The petitioner no.1 being an Association made representation to the respondents-Government on 25.12.1994 and claimed the same benefits.

4. The Kolkata Bench of the CAT in O.A. No.167/1994 decided on 16.08.1996 directed the respondents to grant the applicants the scale of Rs.260-400 with effect from 1.1.1973 and to pay all back wages as may be admissible upon such fixation.

5. The petitioners therefore relying on the said Order of CAT dated 16.08.1996 again made representation to the respondents on 20.09.1997 and prayed for the same benefits. The petitioners-Union on behalf of the then existing Lift Operators filed O.A. No.525/1998 before the Mumbai Bench and prayed for the benefits with effect from 1.1.1973 for the Lift Operators in Mumbai under the Southern Command. On 4.8.2000 deferred the decision of the Single Bench of the Kolkata CAT Bench in O.A.No.1067/1994. However, in view of the Apex

Court decision in the case of **Union of India v. P.V.Hariharan, 1997 SCC (L&S) 838,** the Division Bench (CAT) referred the issue to the Full Bench for its decision. Other members through M.P.No.904/2001 sought inclusion in O.A.No.525/1998 on 09.10.2000.

6. The Full Bench of the learned Tribunal (CAT, Mumbai) by order dated 09.10.2000 in O.A.No.525/1998 answered the reference as below:

> "8. In view of the discussions above, we answer to the Full Bench reference as below:
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> . In our view there is a strong case for granting the pay scale of Rs.260-400 with effect from 01.01.1973 to the Lift Operators of M.E.S. as they have all along been either superior or on par with the Lift Operators of the CPWD. Parity in pay scales was granted to the Lift Operators of M.E.S. in 1987 based on the judgment dated 23.11.1987 of the Supreme Court in the matter of Lift Operators of the CPWD. However, this Tribunal would not like to interfere in the matter in the matter of fixing/changing of pay scales as it is bound by the judgment of the Hon'ble Supreme Court in the case of Union of India v. P.V.Hariharan, 1997 SCC (L&S) 838 (supra). However, liberty is granted to the applicants-Lift Operators of M.E.S. to place the issue before the National Council of the J.C.M. for consideration."

7. The petitioners-Union therefore had placed the matter before the National Council of the JCM by letter dated 18.11.2000. The Lift Operators working under the

Northern Command had approached the Principal Bench of the CAT at New Delhi in O.A.No.1488/2000. The said O.A. was also disposed of on 06.12.2000 with a direction similar to the one recorded by the Mumbai Full Bench. The policy decision was taken by the Government to apply the said benefits subject to those applicants in the pay scale of Rs.260-400 (pre-revised) with effect from 1.1.1973 at par with their counterpart working in CPWD and further that the pay so re-fixed shall be revised as per the corresponding pay scale of 4th and 5th Pay Commission. It has been further observed that the applicants should be entitled to all backwages as may be admissible to them upon such re-fixation of pay. The arrears so due to the applicants would be paid out of the charged expenditures for which separate sanction would be accorded after due verification by auditor.

8. The said benefit was not extended to the additional batch of members listed in M.P.No.904/2001. Those left out Lift Operators-members of the petitioners-Union therefore had preferred O.A.No.597/2002 and invoked Articles 14, 16 and 39(d) of the Constitution of India being persons similarly placed need not be compelled to approach the judicial forum once the policy decision as laid down by the respondents on a specific issue.

9. By the impugned order dated 6.12.2002 the Mumbai

Bench (CAT) after considering the above facts partly allowed the O.A. but granted monetary benefits limited to one year before filing of the O.A. and also one year before filing of the M.P. by observing that the present petitioners who are similarly situated are entitled to the reliefs subject to limitations and thereby granted monetary benefits limited to one year as referred to above.

10. The Apex Court in **Amrit Lal Berry & ors. vs. Collector of Central Excise Central Revenue & ors., AIR 1975 SC 538** while considering the aspect of delay in filing the petitions though in the matter of promotion, observed in para 24 as under:

> "24. It may be mentioned here that an attempt was made by Amrit Lal Berry to account for delay in filing his petition. He said that he had made two departmental representations, one dated 6-3-1965 and another dated 13-8-1971, of which he filed copies, to which no replies had been received so far by him. It was denied by the Excise Department that he ever sent the first representation. It is evident that he had waited for a considerable period before making his representation in 1965 even if we were to assume that he did make such a representation then. Furthermore, the copy of the alleged representation of 1965 shows that it was directed only against the imposition of a test by examination before confirmation. We do not think that, merely by filing repeated or delayed representations, a petitioner can get over the obstacles which delay in approaching the Court creates because equitable rights of others have arisen. We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and

> obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

11. In **Sat Parkash v. State of Haryana, 2003(1) ATJ 156,** in reference to Articles 14 and 16 while dealing with the arrears of pay the Court observed in paragraph 14 as under:

> "14. As a matter of fact the petitioners, being persons similarly situated, were automatically entitled to the same relief without there being any necessity of their approaching the Court all over again. However, rather than granting the relief automatically the respondents even ignored the legal notice sent by the petitioners to them on August 9, 2000 (Annexure P/8) so much so the petitioners had to approach this Court through Civil Writ Petition No.14594 of 2000 and it was only on directions issued by this Court vide order dated October 31, 2001 that the claim made by them was considered. We have also perused the orders Annexure P/9 passed by respondent No.3 but do not find that the same is legally sustainable."

12. In **Writ Petition No.655/2005-Union of India & ors. v. Surendra S. Singh,** this Court has also by its order dated 15th June, 2006 (Mr.F.I.Rebello & Mrs.V.K.Tahilaramani,JJ.) on identical matter granted the benefit by modifying the order passed by the CAT which was challenged by the respondents and fixed the pay scale of Rs.260-400 from 1.1.1973 and correspondingly pay scale based upon 4th and 5th Pay

Commission. However, the backwages was restricted for a period of three years from the date of filing of Original Application and thereafter.

13. The petitioners-members therefore are entitled for the similar benefits as claimed and granted by the respondents to other similarly placed Lift Operators. The respondents cannot discriminate the rights of such Lift Operators on the ground of delay and/or latches in view of the facts and circumstances of the case. The respondents, on the contrary, ought to have granted the benefits to all the similarly situated persons in view of the decision taken by the respondents in the year 2001 as observed above.

14. If the respondents have granted the benefits to all such Lift Operators from 1.1.1973 then thee is no reason why such consequential benefits should not be granted to the concerned Lift Operators. The respondents by its order/letter dated 13.09.2001 (Exh. "H") informed to the Chief of Army Staff by referring to the O.A.No.525/1998 and O.A.No.1488/2000 and conveyed the sanction of the President of re-fixing the pay of the applicants in both O.As in the pay scale of Rs.260-400 with effect from 1.1.1973 as par with their counterparts working with CPWD. It has been further informed to consider to refix as per the corresponding pay scale of

4th & 5th Central Pay Commission. It has been further observed that those applicants should be entitled to all backwages as may be admissible to them upon such fixation of their pay.

15. Considering the order dated 15.06.2006 passed by this Court in Writ Petition No.655/2005 which is reproduced as under:

> "(1) The Respondent will be entitled to be fixed in the pay scale of Rs.260-400 from 1.1.1973 and correspondingly pay scale based upon 4th and 5th Pay Commission.
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> (2) The Respondent's annual increments will also be fixed in the revised pay scale.
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> (3) The Respondent, however, will be entitled to backwages for a period of 3 years from the date of filing of the Original Application and thereafter."

16. However, it appears that the respondents letter dated 13.9.2001 (Exh.H) was not pointed out or even referred while passing the order dated 15.6.2006 by this Court in Writ Petition No.655/2005. The respondents' intention and as reflected in the said letter has been accepted and acted upon and given the benefit to all such similarly situated Lift Operators by granting them pay scale of Rs.260=-400 from 1.1.1973 and corresponding pay scales. All the Lift Operators therefore will be entitled to back wages as per the letter dated 13.9.2001 with effect from 1.1.1973 and all the consequential

benefits. There is no justification or any reason to discriminate persons like those represented by the petitioners who are, otherwise, similarly situated with all other Lift Operators to whom the respondents have already granted the benefit with effect from 1.1.1973. It may be noted that admittedly the said letter remained final and binding and the respondents opposition therefore in granting benefits in favour of Lift Operators need to be deprecated. The respondents ought to have, granted all such benefits to all similarly situated persons like the petitioners, in view of the Apex Court's decisions in Amrit Lal & Sat Prakash (supra).

17. In view of above, we are allowing the present writ petition by modifying the orders dated 6.12.2002 in O.A.No.597/2002 and the order dated 25.2.2003 in Review Petition No.9/2003 as under:

(i) The petitioners-Lift Operators will be entitled to be fixed in the pay scale of Rs.260-400 from 1.1.1973 and correspondingly pay scale based upon 4th and 5th Pay Commission.

(ii) The petitioners-Lift Operators annual increments will also be fixed in the

revised pay scale.

(iii) The petitioners-Lift Operators, however, will be entitled to backwages as per the Annexure "H" dated 13.9.2001 with effect from 1.1.1973.

18. Rule made partly absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)